

CHAPTER 5

VOTER EDUCATION

The goal of this chapter is to provide guidance to elections officials and the public concerning the voter education requirements of HAVA, and California's implementation of those requirements.

PART 1: CONTRACTS WITH COUNTIES FOR VOTER EDUCATION

HAVA Requirements

As a condition of receiving federal funds, HAVA requires each state to file with the Election Assistance Commission (EAC) a plan for compliance with HAVA. (HAVA § 253(b).) The state plan must include a description of "how the State will provide for programs for voter education. . . ." (HAVA § 254(a)(3).) Accordingly, California's state plan, filed with the EAC by the Secretary of State in 2003, includes plans for voter education and outreach to meet the requirements of title III of HAVA (§§ 301-312). (For the full text of the plan, see http://www.ss.ca.gov/elections/HAVA_finalplan_12-03.pdf.)

State Law Requirements

California law provides that the Secretary of State may provide grants to local elections officials, non-profit corporations, and unincorporated associations to conduct voter outreach and education programs, in accordance with the requirements of HAVA. (Elec. Code, § 2131(a).) Accordingly, the Secretary of State has determined that HAVA funds shall be disbursed to county election officials for voter education, to be provided by contract with each county and as reimbursement for expenses incurred to educate voters regarding the requirements of HAVA and the use of new voting equipment.

A copy of the contract to be executed with each county for the purpose of funding voter education programs is attached.

Voter Education Plan

In connection with the contracts entered into between the Secretary of State and the counties, each county is required to submit a plan to be reviewed and approved by the Secretary of State and incorporated into its contract in order to receive reimbursement for the voter education program. The contracts provide that the Secretary of State shall develop the criteria for the plans. Accordingly, the Secretary of State has determined that the plan for the program must meet certain minimum requirements, including the following:

1. Must identify the HAVA requirements targeted by the plan, including:

- ◆ Voter registration requirements (provide California Driver's License, California Identification Number, or the last four digits of the Social Security Number)
 - ◆ Identification requirements for first-time voters
 - ◆ Provisional voting rights
 - ◆ Federal voting rights generally (which are incorporated by reference into HAVA)
 - ◆ Rights of voters with limited English proficiencies
 - ◆ Rights of voters with specific needs (or disabilities)
 - ◆ Complaint procedures
 - ◆ Use of voting systems, instructions, procedures
 - ◆ Use of voting systems – procedures to detect errors on ballot
 - ◆ Use of voting system – detection of an over vote
2. Must identify and use tangible, quantifiable methods to deliver education program. Acceptable methods for delivery of information include:
- ◆ Development of materials (brochures, Public Service Announcements, advertising) --- measured by type and quantity; distribution
 - ◆ Work with community interest groups (gathering and maintaining databases/mailling lists; postage; hosting regional multi-group conferences -- measured by number and attendance
 - ◆ Public service announcements ---measured by air time
 - ◆ Paid advertising for television, radio, or print --- measured by air time, print dates
 - ◆ Incremental cost of including information in sample ballots --- measured by number of sample ballots printed
 - ◆ Polling place materials, including written instructions, posters --- measured by use of materials on Election Day
 - ◆ Posting materials on Internet website
 - ◆ Deployment of information on a toll-free hotline
3. Must identify the timeframes for critical milestones such as production of materials, planning and scheduling for community events, and timeframes or dates and descriptions of community events and the role of the county, consultant or contractor (if known).
- ◆ The plan should also include a log for tracking activities as they occur (e.g., community group meeting; newspaper run of ad; submission of PSA to local media; etc.).
4. Must be supported by past actual costs or by methodology to determine incremental costs; plan should identify estimated cost.
- ◆ Methodology for incremental cost should take into account the amount of time or resources expended on HAVA related activities as a percentage of time spent on the overall activity (e.g., 40% of time for established voter education program

expended on HAVA requirements; or 15% of sample ballot devoted to HAVA requirements).

- ◆ Actual time (as documented by employee or contractor timesheets) expended for HAVA related activities will be the basis for reimbursement.
- ◆ Invoices for production of materials must be provided to receive reimbursement
- ◆ Tear sheets, audio recordings or visual recordings of advertising should be retained for audit purposes.

5. Must meet other terms and conditions of contract

- ◆ Scope of work and use of funds provisions
- ◆ Administrative requirements for payment of claims
- ◆ Contracting provisions required by state law
- ◆ Auditing provisions and restrictions on use of funds
- ◆ Requirements for keeping and retaining records of the program
- ◆ Prohibition on partisan activity with federal funds, or political activity in the workplace
- ◆ Other provisions as stated in the contract or in communications from the Secretary of State to county election officials clarifying contract requirements and conditions
- ◆ Other terms and conditions of the contract

Suggested Plan outline:

- I. HAVA requirement targeted (identify each)
- II. Assessment of need (including the involvement of an advisory group or groups, if any)
- III. Method of voter education program delivery (identify each)
- IV. Estimated timeframe for implementation of plan (may be incorporated throughout)
- V. Estimated cost of activity
- VI. Activity log sheet to track implementation
- VII. Contact person

(See CCROV 05338, November 17, 2005.)

PART 2: VOTER EDUCATION PROGRAMS FOR USE OF VOTING EQUIPMENT (INSTRUCTIONS TO VOTERS)

HAVA Requirements

Section 301(a) of the Help America Vote Act requires that each voting system used in a federal election, as of January 1, 2006, must:

1. Permit the voter to verify, in a private and independent manner, his or her vote selections before the ballot is cast and counted;
2. Provide the voter the opportunity to change or correct, in a private and independent manner, any error before the ballot is cast and counted (this shall include the opportunity for a “replacement” ballot if the voter is otherwise unable to make this change or correction);
3. Notify the voter of any “over votes” on his or her ballot and the effect of casting too many votes for the office;
4. Provide the voter the opportunity to correct any “over votes” before the ballot is cast and counted.

In addition, this section of HAVA specifies that a county that uses a paper ballot voting system may meet the requirements in #3 and #4 above by:

- (A) Establishing a voter education program that informs voters about over votes, and:
- (B) Provides voters with instructions on how to correct or replace with a new ballot a ballot that is over voted.

“Voting system,” as used in this section, is defined very broadly in Section 301(b) as “the total combination of mechanical, electromechanical, or electronic equipment Including software, firmware and documentation required to program, control, and support the equipment) that is used to define ballots, to cast and count ballots, to report or display election results, and to produce and maintain any audit trail information.” In addition, the definition includes the practices and documentation used to identify system components, to test the system, to maintain records, to determine changes needed to improve the system, and “to make available any materials to the voter (such as notices, instruction, forms, or paper ballots).”

Section 301(c)(2) indicates that, for purposes of #1 above, the term “verify” may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the verification requirements. Section 301 further requires that any notice to the voter regarding over votes or other voting errors preserve the privacy of the voter and the confidentiality of the ballot.

State Law And Requirements

Elections Code section 19201 requires that all voting systems receive approval from the Secretary of State prior to use in California elections. Section 19205 further requires that the Secretary of State establish specifications and regulations for voting systems. Certification of each voting system includes adoption for the approved use of that voting system. These procedures include a definition of ballots with an “over vote.”

Elections Code section 19225, et seq. requires that “individuals who are blind or visually impaired” have the right to “cast and verify their ballots independently.” Section 19227 further requires that each polling place have at least one voting unit that provides “access to individuals who are blind or visually impaired” if sufficient funds are available from HAVA and Proposition 41 to implement this requirement. “Access” is defined as “the ability to receive, use, select, and manipulate data and operate controls included in voting technology and systems.” Compliance for voting systems in use before 2003 “shall be achieved at the time of procurement of an upgrade or replacement to existing voting equipment or systems.”

Elections Code section 14272 requires that voters receive instruction on the proper use of voting equipment prior to voting at a polling place, and permits voters to ask for additional instruction from poll workers. In addition, Elections Code section 14288 requires that a voter who “spoils” a ballot at a polling place may request up to two replacement ballots. Similarly, Elections Code section 3014 permits absentee voters to request a replacement ballot if they provide a statement, signed under penalty of perjury, that they did not receive, have lost, or destroyed the first ballot sent to them.

Education And Instruction Program

Section 301(a)(1) addresses two minimum requirements for voting systems. Specifically, it states that every voting system, whether it is paper ballot, touch screen, or any other form of voting, is required to:

- (1) Permit the voter to verify his or her selections and to correct them prior to the ballot being cast and counted.
- (2) Notify the voter if he or she has over voted, alert the voter as to the effect of an over vote, and provide instructions to the voter as to how to correct the over vote or replace the ballot before the ballot is cast and counted.

HAVA does not specifically require or permit an education program to address (1) above, but does permit a county that uses a paper-based voting system to meet the requirement of (2) with an education program and instructions to the voter.

The requirement for a voting system to provide notice to voters about over votes applies to absentee and all-mail ballots as well as polling place voting systems. In practical terms, this means that every county must have to develop and implement an education program --- at least for absentee voters and, if a paper-based system is also used for voting at polling places, for voters at polling places.

Required Elements Of An Education And Instruction Program On Over Votes

If a county meets the requirements of Section 301(a)(1)(A)(iii) by establishing a voter education and instruction program, that voter education and instruction program must, at a minimum:

- A. Notify each voter of the effect of casting multiple votes for an office;
- B. Instruct the voter on how to correct an over voted ballot before it is cast and counted, and;
- C. Instruct the voter on how to obtain a replacement ballot if the voter is otherwise unable to change the ballot or correct any error.

Possible Methods For Providing Voters With Education And/Or Instruction On Over Votes

HAVA does not specify the methods through which an election official may provide education and instruction on over votes to voters. The education program may include any or all of the following:

1. **PRE-ELECTION PUBLIC INFORMATION** --- Election officials may use a variety of means prior to an election to educate to public about over voting, including press releases and public demonstrations of voting equipment. Public demonstrations offer the opportunity for “hands on” experience with a voting system, and should specifically address the issue of over voting and what a voter can do to correct his or her ballot before the ballot is cast and counted.
2. **EARLY VOTING** --- “Early voting” in community locations offers the opportunity for hands on voter experience and educating voters about over voting.
3. **POLL WORKER TRAINING** --- Information on over voting should be included in training materials for poll workers so that they understand, and can communicate to voters at polling places, information and answers concerning over voting. Oral assistance at the polling place can be combined with written information (see “posters” and “hand outs” below).
4. **WEB SITE** --- Information concerning over voting can be accessible to voters on the county web site.
5. **SAMPLE BALLOT** --- Elections officials may include information on over voting in sample ballots mailed to each voter. This can be included in the section on how to use the voting equipment and/or a separate page or notice.

6. **ABSENTEE VOTING** --- Elections officials may include information regarding the requirements of HAVA in mailings of absentee and/or all-mail ballots to voters.
7. **POSTER AT POLLING PLACE** --- An educational or instruction poster at polling places could be an important mechanism for communicating with voters about the nature and effect of over votes. This could be a separate poster, or the information could be combined with other materials indicating how to use voting equipment. In either case, the information concerning over voting should be prominent and clear to voters.
8. **HAND OUT AT POLLING PLACE** --- A county may choose to provide handouts to voters at the polling place.
9. **MILITARY AND OVERSEAS VOTERS** --- Military and overseas voters have a special need for information and instruction regarding over votes generally and more specifically about how to obtain a replacement ballot should they not receive or need to replace their original ballot. Information and instruction should be included in materials sent to military and overseas voters.

Best Practices

Program Monitoring and Metrics --- A program to monitor the number (and percent) of over votes at each election can be correlated with the methods used to provide voters with educational and instructional materials. Establishing metrics of this nature for over voting will permit elections officials to measure whether the rate of over voting is high or low, increasing or decreasing, and whether there is a need to alter the education and instruction program.

In addition to statistics gathered by a county and compared against statistics for that same county from prior elections, the Secretary of State can request over voting statistics from each of the 58 counties, organize them by voting system, and thereby permit each county to evaluate whether they need to improve or alter their education and instruction program.

Translation --- Informational posters, handouts, and other materials must be translated into languages required in the jurisdiction by the Voting Rights Act of 1965, as amended, but may be translated into other languages as determined by the elections official to ensure that all voters receive and can understand the educational and instructional materials.

Persons With Disabilities --- Information and instruction provided on county web sites should meet basic accessibility design requirements for persons who are blind or visually impaired.

Additional HAVA And State Requirements For Providing Information To Voters

Section 302 (b) of HAVA and Elections Code section 14200 require that election officials post certain materials in polling places on Election Day. These requirements are in addition to state requirements. The following information is a summary of what HAVA requires to be provided to voters at each polling place.

- A. A sample version of the ballot;
- B. Information on the date of the election and the hours during which polling places will be open;
- C. Instructions on how to vote, including how to vote provisionally;
- D. Instructions regarding ID requirements for those voters who registered to vote for the first time by mail and who have not previously voted in the state;
- E. General information on voting rights under state and federal law, including the right of an individual to cast a provisional ballot and instructions on how to contact election officials, and;
- F. General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

In addition, Elections Code section 14105(q) and 14105.3 requires that the Secretary of State provide, and the county post at each polling place, the "Voter Bill of Rights", the contents of which are specified in Elections Code section 2300.